THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No. 574 of 2006

Dated: March, 2006

Between:

Kesu Prasad Nair.

…..PETITIONER

AND

The Union of India, rep by its
Secretary, Ministry of Defence, South Block,
New Delhi –11 and 2 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE
N.V.RAMANA

W.P.No.574 of 2006

ORDER:

Petitioner who is working as Army Major in Defence has filed this writ petition questioning the proceedings dated 8-6-2005 rejecting his application for appearing in Technical Staff Officers Course Examination (for short TSOC) for the year 2005-2006, and consequently seeks a direction to the respondents to treat him as having passed TSOC-32 inasmuch as he passed five papers in the Common Entrance Examination of Defense Services Staff Course (for short DSSC-62) and TSOC-32 held in September, 2005.

In view of the urgency, the learned counsel for the petitioner as well as the Assistant Solicitor General submitted that the writ petition itself be heard and disposed of finally. Therefore, the writ petition was heard finally.

The facts in brief are - the petitioner passed B.Sc. with Chemistry as the main subject from Pune University. He passed the Defence Services Examination and joined the Indian Army Academy in June 1993. Presently he is holding the post of Major. Indian Defence Services has prescribed departmental examination such as DSSC-62 and TSOC-32. The syllabus for DSSC-62 comprises of a written examination of 5 + 1 papers and the syllabus for TSCO-32

comprises of a written examination of five papers. The eligibility criterion fixed by the Defence Services from September 2001 onwards for appearing in TSOC-32 is B.Sc., Physics, B.Sc. Mathematics (Honours) and B.Sc., Chemistry (Honours). The eligibility criterion also specifies that the officer, who is aged below 35 years alone is eligible to appear in the entrance examination, and he is given maximum three opportunities to pass.

Learned counsel for the petitioner submits that the action of the 2nd respondent in rejecting the application of the petitioner for grant of permission to appear for the entrance examination of TSOC-32 for the year 2005-2006 on the ground that the petitioner did not fulfill the requisite academic qualification of B.Sc. with Physics and Mathematics subjects, is illegal and arbitrary. He submits that as per Clause 14(ii)(ad) of Special Army Order, B.Sc. degree should be with combination of any one of the four subjects, namely Physics/Chemistry/Mathematics/ Electronics, as principal major subject for eligibility to appear the TSOC-32, and as the petitioner has passed B.Sc. with Chemistry as the major subject, as per above Clause 14(ii)(ad), he is eligible to appear for TSOC-32. He further submits that the respondents earlier allowed the petitioner to appear for TSOC-32 examination in 1994 with B.Sc. Chemistry as the main subject and Botany and Zoology as optionals, and the action of the respondents in not allowing the petitioner to appear for TSOC-32 for the year 2005-2006 on the ground that the petitioner does not possess the prescribed academic qualification, is illegal and arbitrary and bad law.

Respondents filed counter affidavit denying the allegations made in the writ affidavit. It is stated as per para 14(c) of the Special Army Order 9/S/87, an officer to be eligible for nomination to TSOC-32 should be a B.Sc. graduate with Physics, Chemistry and

Mathematics. As per Special Army Order 7/S/2005/GS, the academic qualifications prescribed for TSOC is as follows:

(a) B.Sc. with Physics, Chemistry and Mathematics.
(b) B.Sc. (Honours) in Physics/Chemistry/Mathematics.
(c) B.Sc. with Physics, Chemistry and Mathematics, as subjects in first two years and either one of these subjects in final year.
(d) B.Sc. with Physics/Chemistry/Mathematics/Electronics as principal/major subject in final year.
(e) B.Sc. with Physics/Chemistry/Electronics and Mathematics.
(f) M.Sc. with either Physics/Eletronics/Chemistry/Mathematics.

It is stated that the syllabus for TSOC at the Institute of Armament Technology, Girinagar, contains Physics and Mathematics. It is not possible for a candidate to keep abreast with the instructions being imparted to candidates of TSOC without the knowledge of Physics and Mathematics at B.Sc. level. The petitioner passed B.Sc. with Chemistry as the main subject, and Botany and Zoology as optionals, and did not have Physics and Mathematics at any time during his three-year degree course from Pune University. In the application, filled in by the petitioner in his own handwriting, at serial number 21, he ticked serial 21(a) which states that the candidate should qualify in B.Sc./B.Sc. (Honours) with Physics, Chemistry and Mathematics, which implies that the officer should have studied all the three subjects in the first two years irrespective of the principal subject. Before commencement of the examination, petitioner was informed in writing that his candidature had been accepted only for Defence Service Staff College Course (DSSC), which was even acknowledged by the petitioner. Since the case of the petitioner was a unique one and first of its kind with such subjects handled by Military Training-2, initially, in 2004 permission was granted to apply for both DSSC and TSOC., however subsequently it was realized that Zoology and Botany have no relevance or usage so far as TSOC curriculum is concerned, and therefore, S/A/O9/S/87 was amended and new clause SAO/7/2005/GS was incorporated in

its place, and the same came into force w.e.f. from 1-2-2005. After scrutiny of the application the respondents rejected the application of the petitioner for TSOC-32 as he does not possess Physics and Mathematics, and further informed him that he is eligible for DSSC-62, and the petitioner has agreed and opted to join in DSSC-62. Thus it is contended by the respondents that the petitioner having agreed and opted to join in DSSC-62, cannot now contend that he is eligible for TSOC-32 and he should be permitted to appear the said examination.

Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the material available on record.

The only point that arises for consideration is whether the petitioner is eligible to appear for TSOC-32 for the year 2005-2006.

Prescribing of educational qualifications for being eligible to apply for or prosecute a particular course, is a matter within the domain of teaching experts, and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, does not prescribe the qualification or substitute the qualification prescribed by the teaching experts.

The qualification criterion for TSOC-32 requires the academic qualification of B.Sc. with Mathematics, Physics and Chemistry as compulsory subjects. Admittedly, the petitioner, as evidenced by his marks sheet of B.Sc. degree, does not have Physics and Mathematics during the entire three-year B.Sc. degree course. He passed B.Sc. with Chemistry as the main subject and Botany and Zoology as optional subjects. It is the case of the respondents that to keep abreast with the instructions of TSOC-32, it is necessary that the officer intending to pursue the course, should have Mathematics,

Physics and Chemistry. This is further evident from the application itself, which at serial 21(a) states that officer should be qualified in B.Sc. or B.Sc (Honours) with Physics, Chemistry and Mathematics, which implies that officer should have studied Physics, Mathematics and Chemistry.

Prima facie the information given by the petitioner at serial No.21 of the application filled by himself is wrong inasmuch as serial 21(d) specifies that Physics and Mathematics is compulsory. Inasmuch as the petitioner does not have Physics and Mathematics, but has Chemistry as the main subject and Botany and Zoology as optional subjects in B.Sc., his candidature was rejected. The contention of the petitioner that when he was permitted to appear in 1994 he should be allowed to appear for the year 2005-2006 cannot be accepted for the reason that the respondents though allowed the petitioner initially subsequently realized that Physics and Mathematics are necessary for keeping abreast with TCOS-32, and accordingly amended the Special Army Order, providing for having B.Sc. with Mathematics, Physics and Chemistry, for being eligible to apply for TSOC-32.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

(N.V. RAMANA, J.)

Date: March, 2006.

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Technical St

aff Officers Course (for short TSOC Course).

Institute of Armament Technology (for short IAT) Girinagar

Defence Service Staff College Course (DSSC)

At the time of admission of the writ petition though this court has not granted any interim direction as prayed for by the petitioner directed the 2nd respondent to consider and dispose of the representation filed

by the petitioner within a period of 10 days from that date.
Now the matter has come up for further orders. However, the counsel confined his argument to the limited extent that the petitioner is eligible to appear for the TSOC-32 course as per Clause 14 (ii) which deals with non-science group of the Special Army Order dated 5th September.

As his main subject is Chemistry he does not have studied Physics and mathematics and he is also eligible for the said TSOC course and it cannot be found fault. The action of the 2nd respondent rejecting the application of the petitioner to appear in the entrance examination of TSOC-32 vide message dated 8-6-2005 is arbitrary and illegal. It is also further contended that the reason for rejecting that he has not studied Mathematics with Chemistry is not correct and the petitioner in earlier year in 2004 was allowed to appear for the examination and this time without any reason the respondents have rejected the case. On this the learned counsel submits that the order is bad. Simply because the petitioner is having Chemistry as principal subject and other two are Zoology and Botany cannot contend that because he posseses Chemistry he is entitled for the course.

Even as per the prescribed age petitioner is 35 days over aged. The telephonic plea of the petitioner to the Director, Military Training-2 seeking a waiver of 35 days so that he could appear in the DSSC Entrance Examination in 2006 was rejected.

Hypothetically, even if the petitionr ahs qualified for TSOC in 2004, on joining the Course at IAT Girinagar, his eligibility would have been detected by the organization and the officer would have been withdrawn from the course as was done in the case of an officer by name Major Raju Kishnani who on detecting ineligible for the course as he has furnished incomplete information in the application form and was withdrawn from the course and disciplinary action was taken.

------ do not possess B.Sc., Chemistry with Physics and Mathematics ---------- syllabus prescribed for TSOC-32 is B.Sc., graduation with Physics and Mathematics as optional and petitioner possesses B.Sc., with Physics and Mathematics as optional is illegal and arbitrary inas.